

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.835 OF 2002  
IN  
SUMMARY SUIT NO.2314 OF 2002

Haridas Bhanushali Plaintiff

versus

The Gujarat State Warehousing Corporation Defendants

Mr.S.R.Mishra for plaintiff.

Ms.Madhavi Diwan with Ms.Mirashi i/by shah & Sanghvi for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th July 2005

PC :

1. The plaintiff prays for a decree in a sum of Rs.12,63,100/- as per particulars of claim Exhibit-K and further interest @ 18% p.a..

2. The plaintiff is sole proprietor of Shri Shakti Cargo Carriers. He is engaged in the business of transport of heavy containers. Defendant is a Corporation owned and controlled by the State of Gujarat. It is engaged, inter alia, in the activities of warehousing and

managing the transport and handling of the I.C.D.containers from Gujarat and outside it's territory.

3. As per plaint averments, it is not in dispute that one Rajkamal Heavy Lifters Pvt. Ltd. was appointed by the defendant as handling and transport contractor for five years w.e.f. 27th March 1997. It is the case of the plaintiff that there were disputes between said Rajkamal Heavy Lifters Pvt. Ltd. and the defendant leading to filing of a civil suit before the City Civil Court, at Ahamedabad. It is the case of the plaintiff that on account of breaches committed by said Rajkamal Heavy Lifters Pvt. Ltd. and abandonment of work, that alternate arrangement was made by the defendant and that is how they approached the plaintiff. It is his case that in 1998 a tender was floated by the Corporation for transportation and handling of containers from Baroda to Mumbai and vice versa. Contract in pursuance to this tender process was allotted to Rajkamal Heavy Lifters Pvt. Ltd.. The functioning as well as transporting activities were stopped by Rajkamal Heavy Lifters Pvt. Ltd. in October 1999. It is in these circumstances that the officers of the defendant Corporation

approached the plaintiff and after discussions a quotation was submitted of the rates which was approved. The plaintiff relies upon the correspondence and the approval at Exhibit-C to the plaint. It is on this basis that Mr.Mishra contends that there is a written contract stipulating terms and conditions including the rates and claim in the suit is based upon the fact that several bills were raised which have been duly paid and it is only in respect of item numbers 7 and 8 of the statement which is annexed to the plaint, that the defendant has withheld payment. Reliance is placed on the approval letters as also the payments made from time to time as evidenced by statement and it is contended that there is no dispute that the work was undertaken between the period 25th November 1999 to 30th April 2000 and even the bills which are presently outstanding have been verified and certified by the defendant. Accordingly, a sum of Rs.12,63,100/- is due and payable. A decree, therefore, in this sum is claimed along with interest as set out above.

4. Mrs.Diwan appearing for the defendant Corporation firstly invites my attention to the annexures to the plaint and more particularly the

statement at Exhibit-F and states that Bill Nos.210/A and 210/B, both dated 28th February 2000 pertain to the work carried out between 3rd January 2000 and 8th February 2000. She states that the stand of the Corporation has been made clear inasmuch as in the reply addressed to the advocate's notice the Corporation pointed out the true and correct facts. Rajkamal Heavy Lifters Pvt. Ltd. had been awarded contract for a duration of five years to be computed from 24th August 1998 and between 7th January 2000 to 8th February 2000, plaintiff appears to have worked as sub-contractor of this party. The claim made in the plaint is pertaining to this period and apart from the fact that defendant have to recover a huge sum from M/s.Rajkamal Heavy Lifters Pvt. Ltd, additionally, said Rajkamal Heavy Lifters Pvt. Ltd. has addressed a letter on 21st February 2000 to the Managing Director of defendant Corporation stating clearly that the work done by the plaintiff is through the said Rajkamal Heavy Lifters and that Rajkamal Heavy Lifters would be paying for the said work to the plaintiff transporter directly. This letter makes a specific request to the defendant not to make any payment to the transporter directly on account of Rajkamal Heavy Lifters for this

period. Therefore, Mrs.Diwan contends that no contract was executed nor any work done under the same by the plaintiff as alleged in the plaint. The plaint averments are belied by the contents of letter addressed by Rajkamal Heavy Lifters. There is no privity of contract between plaintiff and defendant Corporation. She also invites my attention to the averments in the plaint pertaining to the jurisdiction of this Court inasmuch as according to her there is no agreement which has been arrived at by parties at Mumbai. Therefore, there is no question of making payment of bills at Mumbai. No part of the cause of action muchless any material part has arisen at Mumbai. The stipulation on the invoice/bill "Subject to Bombay Jurisdiction" would not assist the plaintiff in any manner inasmuch as for applying that clause, some part of cause of action has to arise within the jurisdiction of this Court. For all these reasons, she submits that unconditional leave be granted to the defendant to defend the suit.

5. With the assistance of Mr.Mishra and Mrs.Diwan I have perused relevant materials. There is no substance in the complaint of Mr.Mishra that copy of bill dated 21st February

2000 along with other documents were not made available to the plaintiff. Above stand is taken in reply to a notice prior to the suit being filed. This letter is annexed as annexure to the affidavit in reply. Plaintiff had enough opportunity to meet its contents and to make appropriate submissions. Apart from the fact that the defendant has raised issue of jurisdiction of this Court, in my view, from a reading of the letter addressed by Rajkamal Heavy Lifters it is clear that payment in respect of bills in question cannot be claimed by plaintiff from defendant. If the plaintiff is unaware of any such communication between Rajkamal Heavy Lifters and defendant then that itself is a Triable issue. It would entail proving the case set out in the plaint at the trial. There is much substance in the contention of defendant that if the plaintiff had any privity with the defendant and any independent contract based upon which the claim was raised, there was no need for making averments pertaining to the alleged abandonment of work by the principal contractor. Prima facie, it appears to me to be a case where there is sub-contractor introduced in the form of plaintiff. It is true that some letters have been addressed but these letters very clearly

state that interim arrangement was made subject to provision of containers. The case of plaintiff that he had an independent contract, is also doubtful because that contract was also cancelled after a brief period. The temporary contract awarded to him is of 8th March 2000. Liability is in respect of a period prior to this date. The rates have also been approved subsequently. Hence for the period in question it is doubtful whether the defendant could be held liable by the plaintiff. Several triable issues pertaining to the liability of the defendant arise for determination. This is a fit case where unconditional leave to defend deserves to be granted. Unconditional leave to defend. Suit transferred to the list of commercial causes with usual directions to file written statement, discovery and inspection. Summons for Judgement stands dismissed.

(S.C.DHARMADHIKARI, J.)